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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0130**

In the Matter of the Welfare of the Children of: T. B., Mother.

**Filed August 28, 2023
Affirmed
Bryan, Judge**

Ramsey County District Court
File No. 62-JV-21-876

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Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant father challenges the decision to transfer permanent legal and physical custody of his child to foster parents, arguing that the district court erred when it determined that respondent county made reasonable efforts to support placement of the child with father and that the district court misapplied the law. We affirm.

FACTS

Mother T.B. (mother) has two children, F.B. (the child), born in 2015, and J.R., who is the child's half brother. Mother was the sole custodian of both children until her parental rights were terminated on May 3, 2022. Appellant father P.C. (father) is the noncustodial, adjudicated father of the child.

The children were adjudicated Children in Need of Protection or Services (CHIPS) in 2018, and again in 2020, due to mother's mental health issues. Respondent Ramsey County Social Services Department (the county) was given temporary legal custody of the children during both CHIPS proceedings, and the children were placed, at mother's request, with the foster parents, who have had a relationship with mother's children since 2014. On December 17, 2021, after mother failed to correct the conditions that led to the children being placed out of her home, the county filed three petitions: (1) a petition to terminate mother's parental rights to both children; (2) a petition to transfer permanent legal and physical custody of J.R. to the foster parents; and (3) a petition to transfer permanent legal and physical custody of the child to the foster parents. The child had been placed with the foster parents for more than 450 days. Over the previous five years, the child had been placed with the foster parents for more than 870 days.

On December 29, 2021, father petitioned to have custody of the child transferred to him.¹ The district court held a trial on the competing custody petitions regarding the child

¹ The court terminated mother's parental rights as to both children on May 3, 2022. Permanent legal and physical custody of J.R. was transferred to the foster parents on September 28, 2022.

over seven days between August and October 2022. The district heard the testimony of the county caseworkers, the guardian ad litem (GAL), father, the foster parents, members of father's family, and multiple medical and behavioral health service providers for the child. The following factual summary is based on the evidence presented at trial.

The child was diagnosed with post-traumatic stress disorder and disinhibited social engagement disorder when she was four years old. When the child began attending school, her aggressive and disruptive behaviors met the criteria of an emotional or behavioral disorder. An individualized education plan (IEP) was developed and put in place for her. The child's service providers testified that the child requires ongoing medical care and consistent structure and routine. The child's service providers testified that the child reported she was abused by father, including being beaten with a belt.

The district court admitted the case plans. According to the case plans, father needed to undergo and follow the recommendations of parenting, psychological, and chemical health assessments, as well as satisfy the following requirements: (1) engage in parenting education to focus on child development and appropriate limit setting and discipline; (2) participate in the provision of services to understand the child's needs and progress; (3) complete domestic violence programming; (4) submit to drug testing; (5) engage in individual therapy; and (6) undergo psychoeducation about the trauma the child has been through. The expert who conducted father's psychological evaluation testified that father had not recognized the child's special needs and has never received "treatments for [his] criminal behaviors." The expert was therefore "concerned about [father's] capacity to safely care for [the child]."

One of the caseworkers testified that father did not complete a majority of the items in his case plans. Another caseworker testified she “did not believe that [the child] would have her day to day needs met and [/or] that she would be safe in [father’s] care.” The GAL testified that father failed “to demonstrate strong willingness to parent [the child] full time,” was not compliant with taking the actions required by his case plans, has complied only minimally with a few of the requirements of the plans, has been unable to meet the child’s emotional needs, and lacked understanding of the effect of the child’s trauma on her behavioral and emotional regulation. The GAL stated she believed it was in the best interests of the child for sole custody to be transferred to the foster parents.

In its order following the trial, the district court emphasized the trauma and abuse experienced by the child. The district court then determined that father struggled to meet the child’s emotional needs, failed to show a willingness to learn how to parent a child with significant emotional and behavioral issues, failed to appreciate the impact of the child’s trauma on her behavior, missed most of the child’s IEP meetings and participated minimally when he did attend, was unaware of the goals the child’s special education teacher had for her, did not involve himself in her early childhood education programming, and had next to no engagement with her psychiatrist and other professionals supporting the child. In addition, the district court also found that father has been unemployed since 1997 and is more than \$100,000 in arrears for child support related to other children. Moreover, father has a history of romantic partners (including mother and the mother of four of father’s other children) obtaining orders for protection against him, and he failed to complete the domestic violence programming that was required as part of his case plans.

The district court also determined that the county made reasonable efforts to support father, including arranging for father to undergo a psychological evaluation and parenting assessment, and providing father opportunities to receive psychoeducation, to better understand the child's trauma, to participate in the development of the child's IEP, and to engage with the child's therapist and her psychiatrist.

Finally, the district court also determined it is in the child's best interests to transfer custody to the foster parents. The district court considered the fact that the child has never lived with father and that the child has a strong interest in being placed with her sibling, J.R. The district court noted that separating the siblings would be traumatic for the child as J.R. is a significant part of the consistency and stability that the child needs. The district court noted that the foster parents have provided a safe and loving home for both children and observed that father's prior criminal offense renders him ineligible to be a placement option for J.R. Unlike father, the district court found that the foster parents have prioritized the child's needs and have engaged with all the professionals supporting the child, including the child's therapist, special education teacher, childcare provider, psychiatrist, caseworkers, and the GAL. The district court also noted that the child's behavioral and emotional issues improved while she was in the care of the foster parents. Father appeals.

DECISION

Father argues that the district court erred in determining that the county made reasonable efforts to support the child's placement with father because of deficiencies in his case plan. Father also argues that the district court erred as a matter of law in failing to

apply a presumption in favor of biological parents.² Because father forfeited a challenge to the sufficiency to his case plan, and because the district court's best interests determinations were sufficient to overcome any presumption in favor of biological parents, we affirm the district court's decision.

Minnesota law requires that any "order permanently placing a child out of the home of the parent or guardian" must include findings regarding the following four factors:

- (1) how the child's best interests are served by the order;
- (2) the nature and extent of the responsible social services agency's reasonable efforts or, in the case of an Indian child, active efforts to reunify the child with the parent or guardian where reasonable efforts are required;
- (3) the parent's or parents' efforts and ability to use services to correct the conditions which led to the out-of-home placement; and
- (4) that the conditions which led to the out-of-home placement have not been corrected so that the child can safely return home.

Minn. Stat. § 260C.517(a) (2022). For noncustodial parents, "reasonable efforts" require a social services agency to use due diligence in assessing whether a noncustodial parent "is willing and capable of providing for the day-to-day care of the child." Minn. Stat. § 260C.219, subd. 1(b) (2022). If the agency determines that the child cannot be in the day-to-day care of either parent, the agency must "prepare an out-of-home placement plan addressing the conditions that each parent must meet before the child can be in that parent's day-to-day care." *Id.*, subd. 1(c) (2022). Where, as here, the facts underlying the district court's decision to transfer legal custody are not disputed, this court reviews the district

² Father does not assign error to any of the district court's factual findings.

court's decision for an abuse of discretion. *In re Welfare of Child of D.L.D.*, 865 N.W.2d 315, 321 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015).

Father initially argues that because the case plans did not require him to demonstrate an understanding of the child's needs, the case plans were deficient to a degree that amounts to a lack of reasonable efforts. We are not persuaded to accept this argument for two reasons. First, the county provided father with case plans in March 2021, June 2021, and July 2022, but father made no challenge to the requirements or sufficiency of the case plans to the district court. We therefore conclude that father has forfeited this argument by failing to raise it below. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).³ Second, father's argument misconstrues the case plans. Contrary to his argument, the case plans did emphasize the child's needs and set forth specific steps that father would need to take to demonstrate an ability to care for the child's needs.⁴

Father also argues that the district court erred as a matter of law in failing to apply the presumption in favor of biological parents when it denied his petition to transfer custody of the child to himself. Whether the district court correctly applied the law and

³ Father did not argue to the district court that the case plans failed to comply with Minnesota Statutes section 260C.212 (2022), and we deem this argument forfeited as well.

⁴ For instance, the case plans state that father should "engage in parenting education to focus on child development and appropriate limit setting and discipline," "engage in [the child's] services to gain an understanding of her needs and progress," and "engage in individual therapy to address his minimization of interpersonal issues and gain psychoeducation about trauma that [the child] has been through." The goal of these directives was to ensure father had "the supports and skills [] in place to parent a child with extensive needs and a history of trauma." In addition, the case plans list expected responsibilities of father relating to the child's needs, including attending and participating in the child's educational meetings, attending and participating in the child's medical and mental health care appointments, and responding to the child's daily health care needs.

whether a district court properly determined that a party has overcome the legal presumption present legal questions, which this court reviews de novo. *In re A.R.M.*, 611 N.W.2d 43, 47 (Minn. App. 2000); *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 246 (Minn. App. 2018), *rev. denied* (Minn. Feb. 26, 2018). Because the district court's determinations about the best interests of the child are sufficient to overcome a presumption in favor of biological parents, we conclude the district court did not err as a matter of law.

In general, courts have recognized the importance of placing a child with a biological parent. *See, e.g., Troxel v. Granville*, 530 U.S. 57, 72-73 (2000) (plurality decision) (holding that a Washington state statute violated the substantive due process rights of a mother to make decisions concerning the care, custody, and control of her biological children), *quoted in In re Custody of N.A.K.*, 649 N.W.2d 166, 174-75 (Minn. 2002).⁵ This court has held that any presumption in favor of a biological parent, however, can be overcome if the agency establishes that custody with that parent is not in the child's best interests:

But the presumption of fitness is not invincible. It is merely a preliminary inference in favor of maintaining custody with a natural parent in a contest with a nonparent; that it may be overcome demonstrates its impermanence. And there is no dispute that the district court's 2003 order transferring legal and physical custody overcame [parent's] presumption of

⁵ The parties disagree regarding whether *N.A.K.* requires the district court to apply a presumption in favor of father when deciding whether to grant father's petition to transfer custody. The agency argues that, given the holding in *N.A.K.*, any presumption established in that case only applies in custody disputes arising under chapter 518, not transfers of custody arising under the child protection statutes. Because the district court's uncontested factual findings in this case are sufficient to overcome or rebut any presumption in favor of father as a biological parent, we need not determine whether the holding in *N.A.K.* is limited to chapter 518 custody disputes.

parental fitness. The presumption favoring parental custody may be overcome if “there has been established on the [parent’s] part neglect, abandonment, incapacity, moral delinquency, instability of character or inability to furnish the child with needed care,” *or if custody otherwise would not be in the child’s best interests.*

In re Child of Evenson, 729 N.W.2d 632, 636 (Minn. App. 2007) (quoting *N.A.K.*, 649 N.W.2d at 174-75 (emphasis added)), *rev. denied* (Minn. June 19, 2007).

In this case, the district court’s undisputed factual findings underlying the best interests decision are sufficient to overcome any *N.A.K.*-based presumption that might favor father.⁶ The district court found that the child has extensive needs that require ongoing care, but father has continually minimized the child’s needs, failed to follow through when offered education to better understand them, and failed to adequately engage with the child’s care providers. In addition, the district court observed that the child has never lived with father and because of his criminal history, father cannot have custody of

⁶ We observe that the arguments presented to this court relate to two other legal issues. First, as noted above, the Minnesota legislature has imposed certain procedural requirements that apply when considering placement of a child with a third party when an interested noncustodial or nonadjudicated parent requests custody. Minn. Stat. § 260C.219, subd. 1(b) (requiring assessment of whether a “noncustodial or nonadjudicated parent is willing and capable of providing for the day-to-day care of the child”). Neither party addressed whether these and other statutory provisions sufficiently incorporate the due process rights addressed in *Troxel*. Second, this court has noted that a presumption in favor of a biological parent applies only to a “fit parent.” See *Johnson-Smolak v. Fink*, 703 N.W.2d 588, 592 (Minn. App. 2005) (holding that a presumption applies “unless it is shown that the parent is unfit . . . or that there are extraordinary circumstances requiring that the parent be deprived of custody”). Neither party specifically addressed whether father meets this or any other prerequisite, apart from the parties’ discussion of the district court’s best interests determinations. Given our conclusion that the uncontested factual findings are sufficient to overcome or rebut any presumption in favor of father, we decline to analyze these issues.

the child's sibling, J.R. Thus, granting father's request would result in separating the child and J.R., something that the district court found would be harmful to the child's wellbeing. Finally, in contrast, the district court found that the foster parents have prioritized the child's needs, engaged with all the professionals supporting the child, received custody of J.R., and contributed to the child's behavioral and emotional improvement while she was in their care. These determinations necessarily overcome and rebut any presumption in father's favor.

Affirmed.